

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LUCAS PIERCE,

Plaintiff,

-against-

9:06-CV-1290
(LEK/GHL)

DAVE MONELL, Lieutenant, Tioga County Jail,
JESSIE HOWE, Corrections Officer, Tioga County
Jail, and NATE MARSH, Sergeant, Tioga County
Jail,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on September 10, 2007 by the Honorable George H. Lowe , United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 14). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Defendants Dave Monell, Jessie Howe, and Nate Marsh, which were filed on September 24, 2007. Objections (Dkt. No. 15).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* Defendants claim that Judge Lowe incorrectly applied the heightened pleading standards established by the United States Supreme Court in Bell Atlantic Corp. v. Twombly, 550 U.S. ___, 127 S. Ct. 1955 (2007). In a *per curiam* decision issued

shortly after Twombly, the Supreme Court reaffirmed that documents filed *pro se*, as is the case before the Court, must still be liberally construed and held to a less stringent standard. Erickson v. Pardus, ___ U.S. ___, 127 S. Ct. 2197, 2200 (2007) (per curiam). In keeping with this admonition, Judge Lowe's Report-Recommendation properly stated and applied the pleading standards. Accordingly, after considering the objections and undertaking a de novo review of the record, the Report-Recommendation should be approved for the reasons stated therein.

Therefore, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 14) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Defendants' Motion to dismiss (Dkt. No. 6) is **GRANTED IN PART and DENIED IN PART**; and it is further

ORDERED, that Plaintiff's independent state law tort claim arising out of Defendants' alleged threats against him is **DISMISSED**; and it is further

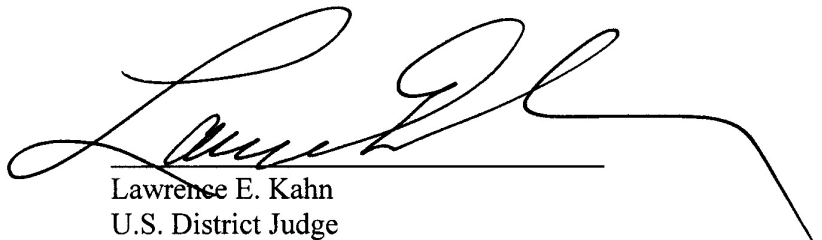
ORDERED, that Plaintiff's federal civil rights claim alleging Defendants' negligent loss of Plaintiff's property is **DISMISSED**; and it is further

ORDERED, that the remainder of Defendants' Motion to dismiss is **DENIED** for the reasons stated in Judge Lowe's Report-Recommendation; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 26, 2007
Albany, New York


Lawrence E. Kahn
U.S. District Judge

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